IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11445 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHUPATSINH @ BHUPENDRASINH KHUMANSINH BAARAD

Versus

STATE OF GUJARAT

Appearance:

MR MM TIRMIZI for Petitioner

SERVED BY RPAD - (R) for Respondent No. 1

RULE SERVED for Respondent No. 2, 3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 23/04/2001

ORAL JUDGEMENT

1. The petitioner abovenamed has preferred this petition under Article 226 of the Constitution of India challenging the order of his detention passed by the

District Magistrate, Bharuch - respondent no. 2 herein on 20th September, 2000 in exercise of the powers conferred on him under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short "PASA").

2. The petitioner has challenged the aforesaid order of his detention dated 20th September, 2000 on various grounds. One of the contentions is that the papers supplied to the petitioner were not legible and therefore, petitioner was not in a position to make effective representation against his detention. That, therefore, the order of detention stands vitiated. It is also contended that the offence, which is committed by the petitioner did not show that there was likelihood of breach of public order and therefore, the case is covered by principles of non application of mind by the Detaining Authority and therefore, order of detention is illegal.

3. On the aforesaid contention, the petitioner has claimed that the order of detention may be treated to be illegal and consequently, the order of detention passed against him be quashed and set aside and the petitioner may be set at liberty forthwith.

4. On receiving the petition, Rule was issued and Mr. K.G. Sheth, learned AGP appears on behalf of the respondents and waives service of Rule. I have heard Mr. Anil Verma for Mr. M.M. Tirmirzi, learned advocate for the petitioner and Mr. K.G. Sheth, learned AGP for the State of Gujarat.

5. They have taken me through relevant documents on record.

6. One of the contention in the petition is that the papers supplied to him were not legible and therefore, he could not make effective representation against his detention. For the said purpose, he has referred to Page No. 33, which refers to the statement of Bhupendrasingh Khumansinh Barad. On going through the copy of the statement of this witness supplied to the petitioner, it transpires that some lines of this statement are not legible. It is not in dispute that this statement was referred and relied upon by the Detaining Authority for the purpose of passing order of detention of the present petitioner.

7. A representation against the detention is a valuable right of a detenu under Article 22(5) of the Constitution of India. In order to avail of this

opportunity, it is also necessary that the documents relied upon by the Detaining Authority should be supplied to the detenu. Supply of illegible documents would amount to non supply of documents and once it is found that the documents relied upon by the Detaining Authority have not been supplied to the detenu, then, it goes without saying that the valuable right of the petitioner to make effective representation against his detention has been violated. As said above, it is the statutory right and it is also a constitutional right under Article 22(5) of the Constitution of India.

8. It is therefore, clear that the valuable right of the petitioner to make effective representation has been taken away and therefore, the further detention of the petitioner cannot be sustained.

9. In that view of the matter, the order passed by respondent no. 2, detaining the petitioner as aforesaid, cannot be sustained in the eye of law.

10. For the reasons stated above, the petition is required to be allowed and the order of detention against the petitioner is required to be set aside. In view of above, other points have not been pressed into services.

11. For the fore going reasons, the petition is allowed. The impugned order dated 20th September, 2000 passed by the District Magistrate, Bharuch is quashed and set aside. The detenu shall be released forthwith if not required in any other cases. Rule is made absolute accordingly. Direct Service Permitted.

(D.P. Buch, J.)

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